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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

**AUSTIN and LOGAN FLAKE, husband and
wife,**

PLAINTIFFS,

v.

**JOSEPH MICHAEL ARPAIO, in his official
capacity as Sheriff of the Maricopa County
Sheriff's Office, and in his personal capacity
along with his wife AVA J. ARPAIO;
MARICOPA COUNTY, by and through the
MARICOPA COUNTY BOARD OF
SUPERVISORS Denny Barney, Steve
Chucri, Andy Kunasek, Clint Hickman, and
Steve Gallardo, in their official capacities,**

DEFENDANTS.

Case No. _____

COMPLAINT

**(Violations of 42 U.S.C. § 1983, Abuse of
Process, Malicious Prosecution)**

(JURY TRIAL DEMANDED)

Plaintiffs Austin and Logan Flake ("Plaintiffs"), for their Complaint against Defendants Joseph Michael Arpaio and Ava J. Arpaio, and Maricopa County, by and through the Maricopa County Board of Supervisors, hereby allege:

JURISDICTION

1
2 1. This action is brought pursuant to 42 U.S.C. §1983 and the Fourth, Fifth, and
3 Fourteenth Amendments to the United States Constitution. Jurisdiction is founded upon 28
4 U.S.C. §§1331 and 1343(a)(3) and (4) and the aforesaid statutory and constitutional provisions.

5 2. Plaintiffs have satisfied the provisions of A.R.S. §12-821.01 by serving upon
6 Defendants a Notice of Claim more than sixty (60) days prior to the date of the filing of this
7 Amended Complaint. Defendants have not responded to the Notice of Claim. The Notice of
8 Claim is attached as Exhibit “A” hereto, and its facts and allegations are specifically
9 incorporated by reference herein.

10 3. Venue is proper because the events at issue occurred in Maricopa County,
11 Arizona.

GENERAL ALLEGATIONS

12
13 4. Plaintiffs Austin and Logan Flake (the “Flakes”) were a married couple during the
14 time of the events described herein. A divorce proceeding was commenced on April 14, 2015.

15 5. At all relevant times herein, Defendants Joseph Michael Arpaio (“Arpaio,” or
16 “Sheriff Arpaio”) and Ava J. Arpaio were a married couple residing in Maricopa County,
17 Arizona. Defendant Arpaio is named in both his official capacity as the Sheriff of Maricopa
18 County, and in his personal capacity. At all relevant times, Defendant Arpaio was acting in
19 furtherance of his marital community.

20 6. Defendant Maricopa County is a political subdivision of the State of Arizona, and
21 a person within the meaning of 42 U.S.C. § 1983. Maricopa County is formally named as a
22 Defendant by and through its Board of Supervisors, which is comprised of Denny Barney, Steve
23 Chucuri, Andy Kunasek, Clint Hickman, and Steve Gallardo, in their official capacities. The
24 Maricopa County Sheriff’s Office (“MCSO”), a non-jural subdivision of Maricopa County, is
25 actually responsible for the events described herein, and the Board is named as a legal fiction.
26

GENERAL ALLEGATIONS

7. In June 2014, Austin and Logan Flake were a happily married couple living in Provo, Utah, where Austin was attending Brigham Young University.

8. Austin was 21 years old, and Logan was 20. Austin expected to graduate Brigham Young University in the fall of 2015.

9. Austin Flake is the son of Senator Jeff Flake of Arizona (“Senator Flake”).

10. In 2011, Defendant Arpaio publicly announced that he was contemplating a campaign against Jeff Flake for the United States Senate. Arpaio never ran.

11. Previous to June 2014, Senator Flake had publicly voiced opinions critical of the so-called “birther” movement, of which Defendant Arpaio is a prominent member. Arpaio conducted a bogus six-month investigation into the birthplace of the President of the United States, which culminated in him publicly announcing that “probable cause exist[ed]” to accuse the President of the United States of forgery and fraud.

12. Defendant Arpaio has a long history of abusing his office to conduct investigations and/or press charges without probable cause, whether for spite or publicity. His targets have ranged from ordinary people like a mailman or a police officer, to respected public officials like judges and their family.

13. In summer and fall of 2014, Defendant Arpaio and the MCSO illegally investigated and pressed felony charges against Plaintiffs without probable cause, and in violation of their constitutional rights.

14. Defendant Arpaio has made statements that he loves this case, and others like it, because the more he publicizes them, the more money that he receives in campaign contributions.

15. Defendant Arpaio knew that the Flake name would garner publicity, and publicized the criminal case against the Flakes heavily.

17. Arpaio even went so far as to direct the Maricopa County Sheriff's Office to try to connect Senator Flake to the investigation of Plaintiffs.

19. On June 27th, 2014, the Maricopa County Sheriff's Office surveilled Senator Flake and his wife at their home, even though Austin and Logan Flake were out-of-state in Utah.

21. At Defendant Arpaio's direction, the MCSO knowingly provided misinformation to the prosecution, omitted relevant information, and concealed exculpatory evidence.

22. These actions directly resulted in the wrongful indictment of Plaintiffs, and pretrial deprivation of their constitutional rights without probable cause, in violation of their clearly established federal constitutional rights. As a result, their reputations have been immeasurably harmed.

23. In June 2014, Plaintiffs were house-sitting for Logan's Flake's parents for a week. Plaintiffs were responsible for taking care of the several children who lived in the home, as well as tending to the kennel that Logan Flake's parents operated out of their home. The home regularly boarded upwards of 25 to 30 or more dogs.

24. At approximately 12:00 a.m. on the morning of June 20th, the air conditioning unit that serviced the kennel shut down. The temperature in the kennel rose substantially overnight. This resulted in the tragic deaths of twenty-one dogs from heat stroke in the subsequent hours, including Logan's family's dog.

25. When the Flakes discovered the animals in the early morning, they were nearly all already dead or dying. The Flakes tried to cool them down with water and ice, but to no avail.

26. On June 21st, 2014, MCSO deputies responded to calls about the deaths of the animals. The owner of the kennel and the home, Logan Flake's step-father, informed deputies that the dogs had died during the night, because the air conditioning had failed. He speculated that it might have failed because there was a wire in the room that had been chewed-through.

27. Austin Flake told deputies that when he checked on the dogs before going to bed, the room was cool, and the air conditioning was working; but that when he discovered the dogs in the morning, the room was more than 100 degrees, and the air conditioning had failed.

28. On June 22nd, a Maricopa County Sheriff's Deputy stated that it was a "horrible, tragic accident at this point."

29. On June 23rd, Defendant Arpaio put out a press release calling himself "aggressive" on "animal abuse and neglect," and promising a "full investigation."

30. At Arpaio's direction, the MCSO hired an expert on air conditioning systems, and directed the expert to investigate whether the chewed-through wire could have caused the air conditioning to fail.

31. On July 12th, 2014, the expert concluded that it was "very likely" that that the air conditioning unit shut down "completely." He concluded the cause was that the homeowners, Logan's parents, had failed to clean or replace the filters, causing the evaporative coil to freeze.

32. At Arpaio's direction, the MCSO obtained a court order for the home's electrical records.

1 33. On July 16th, MCSO Deputy Robert Walter Kalinowski received a report from the
2 Salt River Project (“SRP”) detailing the electrical usage in the home on the night of the incident
3 and surrounding months. The report showed a 40% drop-off in electrical usage starting at
4 around midnight on the night of the incident, as compared to every other night during that week,
5 and the previous weeks. The usage on that night also flat-lined for hours, instead of cycling as it
6 had on every other night.

7 34. Deputy Kalinowski called the Salt River Project to ask if there were any black-
8 outs reported that night. The Salt River Project confirmed that there were no black-outs.

9 35. Deputy Kalinowski subsequently authored a report which falsely stated that the
10 electrical usage on the night of the incident was “consistent” with previous days.

11 36. The information then known to the MCSO did not support a reasonable suspicion
12 that a crime had been committed.

13 37. There was never any genuine doubt that the air conditioning had failed, directly
14 leading to the dogs’ deaths.

15 38. On July 18th, two days after the MCSO received the SRP report, Defendant Arpaio
16 asked Attorney General Tom Horne, whom he was supporting for re-election, if Horne’s office
17 could potentially handle the case.

18 39. By law, Defendant Arpaio was required to send his cases to the Maricopa County
19 Attorney.

20 40. Upon information and belief, Defendant Arpaio asked Attorney General Horne
21 about handling the case because Arpaio believed that the Maricopa County Attorney’s Office
22 would reject it, given that there was no probable cause to suspect the commission of a crime.

23 41. On September 9, 2014, Defendant Arpaio held a press conference to publicly
24 announce that he was recommending that Austin and Logan Flake be charged with 21 felony
25 counts of animal cruelty.

1 42. This conference served absolutely no valid law enforcement purpose, and was held
2 in violation of both police and prosecutorial ethics.

3 43. Upon information and belief, Arpaio publicly recommended charges because he
4 intended to pressure the Maricopa County Attorney's Office into bringing charges, and to garner
5 publicity for himself.

6 44. Defendant Arpaio lacked probable cause to recommend or press felony charges
7 against the Flakes.

8 45. By law, animal cruelty can only be a felony if the offender "intentionally" or
9 "knowingly" committed a crime. Even misdemeanor animal cruelty requires, at the minimum,
10 that the offender act with a "reckless" level of intent, which is defined as "that a person is aware
11 of and consciously disregards a substantial and unjustifiable risk."

12 46. Defendant Arpaio lacked any evidence to show that the Flakes acted with the
13 requisite level of intent to commit animal cruelty. There was no evidence that the Flakes
14 intentionally, knowingly, or recklessly meant to harm any animal or otherwise violate the animal
15 cruelty statute.

16 47. Defendant Arpaio intended to signal to the media and public that the charges had
17 merit, in order to pressure the prosecution to bring charges without probable cause. Arpaio knew
18 that prosecutors would be accused of dropping the case because of the Flake name, rather than
19 the complete lack of probable cause and criminal intent.

20 48. The media played right into Arpaio's hands, with many reporters and members of
21 the public openly questioning whether prosecutors were reluctant to prosecute a Senator's son.

22 **False Testimony to the Grand Jury**

23 49. On Friday, October 10, 2014, the Maricopa County Attorney's Office—under
24 pressure as a result of Arpaio's public recommendation of felony charges—brought the case to a
25 grand jury.

1 50. A Detective at the MCSO named Marie Trombi had been anxious to bring the case
2 to a grand jury, and personally pressured prosecutors. Nine days before the grand jury
3 proceedings, Ms. Trombi received an email from the prosecutor stating, “Case still being
4 reviewed but if/when goes to GJ you will be the first to know. :-)”

5 51. Detective Marie Trombi is closely related to Deputy Chief David Trombi, who is a
6 close confidant of Defendant Arpaio. David Trombi is also the head of the “animal crimes” unit
7 in which Detective Marie Trombi works.

8 52. At Defendant Arpaio’s direction, Detective Marie Trombi knowingly provided
9 misinformation to the prosecutor, omitted relevant information, and concealed exculpatory
10 evidence.

11 53. The prosecutor called Detective Marie Trombi to testify before the grand jury.

12 54. At Defendant Arpaio’s direction, Detective Trombi lied to the grand jury, and
13 intentionally or knowingly presented a theory of the case that was unsupported by reasonably
14 trustworthy facts and circumstances.

15 55. The MCSO presented a case to the grand jury that the air conditioning never shut
16 down; that the kennel in which the dogs were kept was always kept at “100 degrees”; and
17 therefore that the Flakes intentionally caused serious injury to the animals by putting them in the
18 room.

19 56. During the grand jury proceedings, the prosecutor conducting the proceedings
20 asked Detective Trombi if the HVAC investigator’s report indicated that the air conditioning
21 was working.

22 57. Detective Trombi falsely stated that the investigators’ report indicated that the air
23 conditioning “was working.”

24 58. In fact, the actual report stated at the top of the first page that it was “very likely”
25 that the unit failed “completely.”
26

1 59. The prosecutor twice asked Detective Trombi if the records from SRP showed that
2 the air was “working fine all night.” Detective Trombi twice answered, “yes.”

3 60. A grand juror specifically asked Detective Trombi if the SRP records showed that
4 “the air was working and on” during the night of the incident. Detective Trombi repeatedly
5 answered in the affirmative:

6 GRAND JUROR: I’d like to clarify also. So the air was working and on
7 until 5:30 that morning when he tried to fix it, Austin Flake tried to fix it,
8 correct? That’s what SRP said?

9 THE WITNESS: That’s going by the SRP records, yes.

10 GRAND JUROR: That it was on?

11 THE WITNESS: It was on, all night.

12 GRAND JUROR: All night?

13 THE WITNESS: All night.

14 GRAND JUROR: Thank you.

15
16 61. The MCSO knew that this was false, and that it was directly contradicted by clear
17 evidence.

18 62. The only other witness in the grand jury proceedings was a veterinarian who
19 worked for the MCSO named Bernard Mangone. Mangone testified that no food was found in
20 the dogs’ stomachs, and implied that the dogs were not fed. He withheld that he had determined
21 that the dogs showed no actual signs of malnourishment, i.e. that they were in “good flesh,” as
22 he had written in his report. He also failed to testify that the lack of food in their stomachs was
23 easily explained by the dogs vomiting and defecating while they died of heat stroke—also
24 accounting for why the room was full of feces and vomit when they were found.

63. Based on the MCSO's material lies and omissions, the grand jury indicted the Flakes for 21 felony counts of animal cruelty, and 6 counts of misdemeanor animal cruelty, on Tuesday, October 14, 2014.

64. Because of the Indictment, Austin Flake was suspended from Brigham Young University.

65. The Flakes were fingerprinted and their mugshots taken, which quickly spread through the media.

66. Arpaio and the MCSO intentionally and widely publicized the Flakes' indictment, causing irreparable harm to their lives and reputations.

67. The Flakes were subjected to pretrial release conditions preventing them from leaving the State of Arizona, under penalty of arrest.

68. On December 2, 2014, the Flakes' counsel filed a Motion to Dismiss and Remand the Indictment based on the MCSO's material lies and omissions to the grand jury.

69. After an investigation into the grand jury proceedings and the circumstances alleged in the Motion, the County Attorney's Office moved to voluntarily dismiss the case on December 23, 2014.

70. At a press conference, the County Attorney remarked: "[i]t's not a complex decision. It's rather straightforward and easy for us to make – if our goal is to ensure that we arrive at a just result."

71. On May 6th, 2015, the Maricopa County Attorney's Office announced that it had indicted Logan's parents, but that it would not pursue a re-indictment of the Flakes.

72. Defendant Arpaio responded to this announcement by telling media that he was "disappointed," and without even commenting on the re-indictment of Logan's parents—making it clear that the Flakes were always his true target.

COUNT I
**(Violations of 42 U.S.C. § 1983: Malicious and Selective Prosecution,
Abuse of Process – All Defendants)**

75. At all times material hereto, Defendants were acting under color of law.

77. Defendants knowingly and intentionally presented false evidence used to support criminal charges against Plaintiffs, omitted or withheld evidence, and/or presented evidence with a reckless disregard for the truth.

79. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs' constitutional rights were violated, and they have suffered harm and been injured.

11

1 81. Defendants acted for personal, political gain and publicity, and pursuant to a
2 custom and/or practice of targeting, investigating, and prosecuting individuals without probable
3 cause; and the constitutional deprivations and injuries sustained by Plaintiffs as described herein
4 have been caused by such custom and/or practice.

5 82. Defendants were consciously aware of the wrongfulness and harmfulness of their
6 conduct and yet continued to act in the same manner, in deliberate contravention to the rights of
7 Plaintiffs. Punitive damages are therefore warranted.

8
9 **COUNT II**
(Malicious Prosecution – All Defendants)

10 83. Plaintiffs re-allege and incorporate by reference the allegations set forth in each of
11 the preceding paragraphs of this Complaint.

12 84. Defendants initiated or procured the institution of criminal proceedings against
13 Plaintiffs without probable cause and with malice, or primarily for a purpose other than that of
14 bringing an offender to justice.

15 85. The proceedings have terminated in favor of the accused.

16 86. Defendants were consciously aware of the wrongfulness and harmfulness of their
17 conduct and yet continued to act in the same manner, in deliberate contravention to the rights of
18 Plaintiffs. Punitive damages are therefore warranted.

19
20 **COUNT III**
(Abuse of Process – All Defendants)

21 87. Plaintiffs re-allege and incorporate by reference the allegations set forth in each of
22 the preceding paragraphs of this Complaint.

23 88. Defendants used the criminal legal process against Plaintiffs to accomplish a
24 purpose for which it is not designed—to garner publicity, and to dig for information on and
25
26

harm a rival politician and his family. Defendants are subject to liability to the Plaintiffs for harm caused by the abuse of process.

89. Defendants were consciously aware of the wrongfulness and harmfulness of their conduct and yet continued to act in the same manner, in deliberate contravention to the rights of Plaintiffs. Punitive damages are therefore warranted.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for damages for judgment against Defendants as follows:

A. General damages in an amount to be proven at trial;

B. Punitive damages in an amount deemed just and reasonable against Defendants and others that discovery will identify as to the causes of action alleged herein;

C. Costs and attorneys' fees against Defendants as to the causes of action alleged under the Constitution and laws of the United States, pursuant to 42 U.S.C. § 1988;

D. The costs of litigation;

E. All remedies provided by 42 U.S.C. § 1983; and

F. Such other and further relief which may seem just and reasonable under the circumstances.

RESPECTFULLY SUBMITTED this June 19, 2015.

WILENCHIK & BARTNESS, P.C.

/s/ Dennis I. Wilenchik

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CERTIFICATE OF SERVICE

I hereby certify that on June 19, 2015, I electronically transmitted the attached document using the CM/ECF system for filing, and which will be sent electronically to all registered participants as identified on the Notice of Electronic Filing, and paper copies will be sent to those indicated as non-registered participants.

/s/ Hilary Myers